

**The New Jersey District Needs to Execute
Levy Actions Consistent with Sound
Tax Administration and Concern
for Taxpayer Treatment**

September 1999

Reference Number: 199930069



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

September 27, 1999

MEMORANDUM FOR COMMISSIONER ROSSOTTI

A handwritten signature in black ink that reads "Pamela J. Gardiner".

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - The New Jersey District Needs to
Execute Levy Actions Consistent with Sound Tax Administration
and Concern for Taxpayer Treatment

This report presents the results of our review of levy actions in the New Jersey District Collection Division. The objective of our audit was to determine whether the New Jersey District Collection Field function properly exercised levy authority by following legal and procedural requirements, and by using sound business judgment in the treatment of taxpayers. In summary, we found that the New Jersey District violated Internal Revenue Service (IRS) policy and procedural requirements in its use of levy authority.

We recommended that the New Jersey District emphasize policy and procedural requirements on the use of levy authority, and that the District review levy actions taken during the past 9 months to identify instances that meet criteria requiring remedies to taxpayers. The IRS agreed to implement both recommendations. In addition to our recommendations, the IRS has revised procedures to ensure at least one attempt at taxpayer contact prior to levy action. Furthermore, quality reviews of enforcement actions will check to determine whether revenue officers attempted contact prior to enforcement action. Management's comments have been incorporated into the report where appropriate, and the full text of their comments is included as an appendix.

Copies of this report are being sent to the IRS managers who are affected by the report recommendations. Please contact me at (202) 622-6510 if you have questions, or your staff may call Parker F. Pearson, Acting Associate Inspector General for Audit (Small Business and Corporate Programs), at (202) 622-5955.

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Executive Summary

The Office of Audit performed two national audits in Fiscal Year (FY) 1998 that included coverage of the Collection Division in the New Jersey District. One audit focused on the use of Collection performance measures and statistics. The other audit focused on the use of seizure authority in the Collection Field function (CFf). Based on a sample of seizures from 11 districts, 50 percent of the cases with legal and taxpayer contact problems were attributable to the New Jersey District. These practices did not conform to the notice and contact requirements that are designed to protect taxpayers' rights.

This audit was initiated to determine whether the New Jersey District CFf properly exercised levy authority by following legal and procedural requirements, and by using sound business judgment in the treatment of taxpayers.

To accomplish our objective, we reviewed levy actions other than seizures that occurred in FY 1997. In this regard, the New Jersey CFf issued approximately 71,000 levies in FY 1997; the second highest number of levies issued by any one district. This represented a 164 percent increase from FY 1995, while the national increase was 11 percent over the same period. We also estimated that the New Jersey District issued about 30,000 wage levies as a result of a matching initiative with the New Jersey Department of Labor (DOL).

Results

The New Jersey District systematically violated Internal Revenue Service (IRS) policy and procedural requirements in its use of levy authority. The following are summaries of the significant findings during this audit.

- Required procedures were not followed in 92 percent of the 264 levies we reviewed. These procedures are designed to assess a taxpayer's ability to pay, ensure that levy is the proper course of action, and ensure that taxpayers are notified prior to levy. Procedural deficiencies included no attempt to contact the taxpayer in person or by telephone in 85 percent of the cases. See Appendix VI for a detailed listing of guidelines governing the use of levy authority.
- In five percent of the levies we reviewed, taxpayers were not afforded their right to legal notification prior to the levy. This occurred because revenue officers were instructed to issue levies without ensuring that valid "Notices of Intent to Levy" were issued before or after assignment to the CFf.

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- In 35 of the cases we analyzed, levies were issued on taxpayers who were:
 - Deceased.
 - Experiencing medical or financial hardships.
 - Not liable for tax.
 - Currently under audit in Examination Division.
- We requested an opinion from the IRS' Regional Counsel regarding possible remedies to taxpayers who were subjected to improper levy action. In 4 of 19 cases reviewed, Counsel concluded that the taxpayers may have a remedy under 26 U.S.C. § 6343 (1986) and/or 26 U.S.C. § 7433 (1986).
- Seventy-six percent (200 of 264) of the cases we analyzed were disposed of as Currently Not Collectible (CNC) after the levy action. Of those CNC cases, 14 percent (27 cases) were closed as "hardship." Issuing levies in hardship situations without first determining the taxpayer's financial condition is contrary to IRS policy.
- The District's practice of levying as the first action on a taxpayer case without attempting to contact taxpayers, conducting initial analyses, or researching case histories was prevalent in most cases we reviewed. This practice violated procedural requirements and led to mistreatment of taxpayers. The practice was most prevalent in the DOL Project, where levies were generally issued as the first action on cases in an effort to close taxpayer cases quickly to help meet statistical goals.
- Because of poor documentation of the DOL Project, we could not determine the actual number of taxpayers who were affected, or identify the individual taxpayers themselves. We estimated that 30,000 levies were issued on 8,500 taxpayers; however, more than 56,000 taxpayers were potentially at risk for improper levy action by the New Jersey District as a result of the DOL matching initiative. The District should have maintained clear documentation on how taxpayers were identified and selected for levy action.
- The objective of the DOL matching initiative was to provide productive work to the Cff. However, our review of 134 DOL cases indicated that the project adversely affected productivity. For example, the District closed 112 of 134 (84 percent) cases as CNC; 91 of the 112 (81 percent) cases were closed "unable to contact" *or* "unable to locate." In 128 of the 134 (95 percent) cases, there was no documented initial attempt to contact the taxpayer.
- Although the District's "Best Practice" documentation indicated that the basis for the DOL initiative was to identify "uncooperative" and delinquent taxpayers for

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enforcement action, there was virtually no attempt to assess taxpayers' willingness to cooperate and/or their ability to pay prior to the levy actions.

- We found indications that the IRS' Northeast Region may have had doubts about the use of the DOL initiative as a means for obtaining goals. There are also indications that DOL Project cases were, on paper, retained in the inventory of a previously disbanded group to help meet an overage percentage goal.

Summary of Recommendations

The IRS has a legitimate need to use a levy as an administrative means to enforce collection of taxes. Enforcement is an important element of an effective compliance program. However, when levying taxpayers, the IRS must ensure that appropriate legal and procedural requirements are followed and that taxpayers are treated properly.

The New Jersey District revised levy procedures during our audit to curtail the practice of levying as the first action. The IRS also recently implemented a requirement to warn taxpayers of possible enforcement action before levying if the most recent "Notice of Intent to Levy" is over 180 days old. The above measures plus corrective actions to address findings in our prior audit report titled, *Review of Special Projects in the New Jersey District Collection Division* (Reference Number 093307), dated March 15, 1999, will address many of the conditions identified in this review.

In response to our recommendations in the *Review of Special Projects in the New Jersey District Collection Division*, the IRS stated that all special projects in the New Jersey District Collection Division have ended. The response also included the following additional corrective actions:

- Revised review and approval procedures have been instituted regarding all District seizure actions.
- Training will stress the need for prudent use of levies as an enforcement tool.
- District Counsel will review and approve all locally developed notices.
- The New Jersey District will establish review, oversight and documentation procedures for all future special projects.
- District Office Research and Analysis (DORA) Offices will secure sound empirical data to support all future projects.
- Special projects will conform to Compliance Initiative Project guidelines, including requirements to ensure proper initiation and re-authorization.

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In addition to the above actions, the New Jersey District should:

- Emphasize the policy and procedural requirements on the use of levy authority, including requirements outlined in Appendix VI of this report.
- Review levy actions taken during the past nine months to identify instances that meet criteria requiring remedies to taxpayers.

Management's Response: IRS management agreed with our recommendations. The Commissioner responded that all field personnel in the New Jersey District Collection Division were provided reinforcement training on legal and procedural requirements for levies. The District also developed a check sheet to help ensure that applicable levy processes, procedures, and legal requirements are followed. Furthermore, the IRS revised the Internal Revenue Manual to ensure attempted contact with taxpayers prior to levy action. The Collection Quality Management System will check to determine whether revenue officers attempted contact prior to enforcement action.

During case reviews, New Jersey District Collection group managers will check for case defects and take appropriate corrective actions. Collection management will also review levy actions in the New Jersey District during the past 6 months to identify instances that meet criteria requiring remedies to taxpayers.

Management's complete response to a draft of this report is included as Appendix VII.

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Objective and Scope

Our objective was to determine if the New Jersey District CFf properly exercised levy authority. To help accomplish this objective, we interviewed IRS managers and revenue officers, reviewed a sample of closed cases with levy actions, and analyzed management reports and electronic account data.

Our objective was to determine whether the New Jersey District Collection Field function (CFf)¹ properly exercised levy authority by following legal and procedural requirements, and by using sound business judgment in the treatment of taxpayers. Specifically, we:

- Determined whether levy actions conformed to the 26 U.S.C. (1986) and Internal Revenue Manual (IRM) requirements.
- Determined if the Internal Revenue Service (IRS) followed sound business practices on the Department of Labor (DOL) Project involving wage levies.
- Determined if taxpayers were inappropriately levied, and the real or potential impact of those levies.

To accomplish these objectives, we:

- Interviewed IRS management officials and revenue officers.
- Reviewed District Director briefing files, DOL initiative documentation and a judgmental sample of 264 closed Collection cases, (134 from the DOL Project and 130 others that included levy actions).
- Analyzed various IRS management reports and account data on approximately 56,000 New Jersey District Collection cases.

¹ In the CFf, revenue officers make field contacts with taxpayers. Field contact is the final step in the Collection process. It is necessary when the tax matter has not been resolved by an IRS service center or by the Automated Collection System.

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We conducted our audit from June through December 1998, in accordance with *Government Auditing Standards*. Details of our audit objective, scope, and methodology are presented in Appendix I. Major contributors to this report are listed in Appendix II.

Background

In Fiscal Year (FY) 1998, we performed two national audits that included coverage of the New Jersey District Collection Division. One of these audits focused on the use of Collection performance measures and statistics in establishing goals, driving program achievement, and evaluating accomplishments at the program and individual levels. The other audit focused on the use of seizure authority in the CFF.

We initiated this audit because facts developed in the New Jersey District Collection Division contributed significantly to findings in those two national audits of Collection. For example, based on a sample of seizures from 11 districts, 50 percent of the cases with legal and taxpayer contact problems were attributable to the New Jersey District. The New Jersey District practices did not conform to the notice and contact requirements that are designed to protect taxpayers' rights.

As a result of audit findings in the two national reviews, two separate local reviews were initiated in the New Jersey District Collection Division: a review of special projects and this review of levy actions. On March 15, 1999, we issued the audit report on special projects titled, *Review of Special Projects in the New Jersey District Collection Division* (Reference Number 093307). That report contains findings on the New Jersey District DOL initiative.

The DOL initiative matched balance due tax accounts with New Jersey DOL data to identify wage levy

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sources. A levy is an administrative means to enforce collection of taxes. This is one of the strongest means available to collect a tax; therefore, there must be full compliance with the conditions in the IRM.

Any property or right to property can be levied upon, unless it is exempt. Two notices must be sent to the taxpayer before property can be levied. The taxpayer must be given a notice and demand, and must also be given a notice of intention to levy. The IRS has several different “Notices of Intent to Levy”: Computer Paragraph (CP) 504, a systemic notice issued as part of the balance due notice process; Letter 11, issued by the Automated Collection System (ACS);² and Letter 1058, issued by the CFf. The required notices must be sent for each tax period included on a notice of levy.

Generally, the required notices are sent before a revenue officer receives the case in the CFf. If no “Notice of Intent to Levy” has been sent, a revenue officer must do this before levying. The purpose of the “Notice of Intent to Levy” is to warn the taxpayer that continued failure to respond could be expected to result in enforcement action. Enforcement is an important element of an effective compliance program.

Levy Analysis

From FY 1995 through FY 1997, the growth in levies issued by the New Jersey District CFf outpaced all other districts nationwide. During the same period, staffing decreased by about 16 percent.

Analysis of reported levy activity in the CFf showed that from FY 1995 through FY 1997, the increase in New Jersey District CFf levies outpaced that in all other districts. Levies in the CFf increased by 164 percent over those fiscal years, while the national increase was 11 percent. At 75 percent, the increase in the South Texas District was the next highest. During the same time period, there was a 16 percent decrease in staffing in the New Jersey District.

² The ACS is a computerized telephone collection system where telephone assistants collect unpaid taxes and secure tax returns from delinquent taxpayers who have not complied with previous notices.

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In FY 1997, the New Jersey District CFf issued about 71,000 levies. This was the second highest number of levies issued by any one district. About 30,000 (42 percent) of the 71,000 levies were a result of the DOL matching initiative. Because of the significant impact it had on the levy process, the DOL initiative became a primary focus of our review.

Results

The IRS' New Jersey District deviated from procedural requirements in its use of levy authority (see page 6). Required procedures were not followed in 92 percent of the levies we reviewed. Procedural deficiencies included no attempt to contact the taxpayer in person or by telephone in 85 percent of the cases we reviewed.

In five percent of the levies we reviewed, taxpayers were not afforded their legal right to notification prior to levy.

The procedural requirements are designed to assess a taxpayer's ability to pay, ensure that levy is the proper course of action, and ensure that taxpayers are notified prior to levy. In five percent of the levies issued in FY 1997 that we reviewed, taxpayers were not afforded their right to legal notification prior to levy. In 76 percent of the cases we analyzed, cases were disposed of as Currently Not Collectible (CNC) after the levy action.

We identified 35 instances where levies were issued on taxpayers who were:

- Deceased (2).
- Experiencing medical or financial hardships (27).
- Not liable for tax (5).
- Currently under audit in Examination Division (1).

Issuing levies in hardship situations without first determining the taxpayer's financial condition is contrary to IRS policy.

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We requested an opinion from the IRS' Regional Counsel regarding possible remedies to taxpayers who were subjected to improper levy action. We judgmentally selected 19 cases for review by the IRS' Regional Counsel. In 4 of the 19 cases reviewed, Counsel concluded that the taxpayers may have a remedy under 26 U.S.C. § 6343 (1986) and/or 26 U.S.C. § 7433 (1986).

The District's practice of levying as the first action on a taxpayer case without attempting to contact taxpayers, conducting initial analyses, or researching case histories was evidenced in the DOL initiative as well as levies issued outside the initiative. There is evidence that this practice was used prior to the period of the DOL Project (see page 9).

The DOL FedState matching initiative was designed to identify wage levy sources. This initiative involved matching the delinquent individual taxpayer accounts to the DOL Wage Information Database. The original objective of this match was to provide more productive work to the Cff. However, our review showed that the project adversely affected productivity (see page 12).

As many as 56,000 taxpayers were potentially at risk of improper levy action as a result of the matching initiative between the New Jersey District and the New Jersey DOL.

Results of this review indicate that more than 56,000 taxpayers were potentially at risk of improper levy action by the New Jersey District as a result of the matching initiative with the DOL. We estimate that about 30,000 levies were issued on 8,500 taxpayers as part of the DOL initiative. We were unable to determine the actual number of taxpayers who may have been affected or identify the individual taxpayers themselves because of the lack of documentation (see page 14).

In the *Review of Special Projects in the New Jersey District Collection Division*, we reported that the DOL initiative was used to help Collection meet FY 1997 statistical goals by circumventing established procedural requirements for issuing levies to taxpayers. These practices were intended to meet a District Collection Division goal of closing approximately 3,400 cases in a

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relatively short time period, prior to the close of an evaluation period for the District (see page 15).

We also found the following conditions:

- Although “Best Practice” documentation indicated that the basis for the DOL initiative was to identify “uncooperative” and delinquent taxpayers for enforcement action, there was virtually no attempt to assess taxpayers’ willingness to cooperate and/or their ability to pay prior to the levy action.
- Levying as a first action appeared to be an accepted practice in the New Jersey District.

Levy Actions Did Not Meet Legal and Procedural Requirements

Levy Actions Overall

In almost half of the cases we reviewed, revenue officers did not attempt to contact taxpayers, perform initial analyses or issue a “Notice of Intent to Levy.”

In 118 of 264 (45 percent) Collection cases we sampled with levy action, revenue officers *did not perform any* of the following required actions prior to levy action:

- Attempt to contact the taxpayer.
- Perform initial analysis.
- Issue a “Notice of Intent to Levy” (Letter 1058).
- Review an ACS transcript.

In 146 of the 264 (55 percent) cases, revenue officers performed some of the above actions. The following chart details the frequency with which revenue officers performed those actions.

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Action	Cases	Percentage
Attempt to Contact Taxpayer	39	15%
Perform Initial Analysis	77	29%
Issue Letter 1058	44	17%
Review ACS History	25	10%

Figure 1 *The frequency of actions taken by revenue officers in a judgmental sample of 264 Collection cases reviewed. Some cases had more than one action taken.*

The IRM § 5181 states that revenue officers should make prompt contact on all taxpayer cases. The first contact with a taxpayer can be either a telephone call or a field visit, depending on which method is best suited to a particular case. Job element #1 (*Investigation and Analysis*) in the revenue officer critical elements requires revenue officers, upon receipt of a case, to proceed in a logical manner to secure, verify, and analyze information, both internal and external, that will lead to prompt and proper case resolution. As part of the initial contact, revenue officers are to analyze financial information and assess the taxpayer's ability to pay. Job element #2 (*Case Decisions*) states that decisions regarding the appropriateness of levy or other enforcement action should be based on case history. See Appendix VI for detailed information on guidelines governing the use of levy authority.

For the 44 cases where revenue officers issued "Notices of Intent to Levy," we determined that in 12 (27 percent) of the cases, the required 30-day period between issuing the "Notice of Intent to Levy" and "Notice of Levy" was not honored. In some cases, the District issued the "Notice of Intent to Levy" and "Notice of Levy" the same day.

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Notice of Intent to Levy

Taxpayers were not always given proper notice of the IRS' intent to levy.

In 12 of 264 (5 percent) cases we reviewed, taxpayers were not given proper legal notice of the IRS' intent to levy. In five cases, we found *no evidence* that the IRS issued a "Notice of Intent to Levy" before taking levy action. In the remaining seven cases, the IRS did not issue a valid "Notice of Intent to Levy" on one or more of the tax periods included on the "Notice of Levy."

We also analyzed cases where, prior to levy, the taxpayers were issued a systemic "Notice of Intent to Levy" (CP 504, a computer-generated collection notice) but were not issued a "Notice of Intent to Levy" (Letter 1058) by the revenue officer. In these cases, the CP 504 represents legal notification prior to levy. Our results show that, on average, the CP 504s were issued more than 550 days before the date of levy action. In one case, the taxpayer was issued the most recent CP 504 six years prior to the levy action. The effectiveness of a "Notice of Intent to Levy" diminishes when significant time elapses between the issuance of the notice and enforcement action.

The IRS recently instituted a timeliness provision for "Notices of Intent to Levy." According to the new procedure, taxpayers must be advised of pending enforcement action if the most recent "Notice of Intent to Levy" is more than 180 days old. A "Notice of Intent to Levy" over 180 days old is not considered timely.

DOL Initiative

About 12 percent (166 of 1,425) of a sample of DOL Project taxpayers did not receive a systemic "Notice of Intent to Levy."

For 166 (12 percent) of a sample of 1,425 DOL-related Taxpayer Identification Numbers (TINs), we determined that taxpayers *did not* receive a systemic CP 504, "Notice of Intent to Levy," for some or all periods. From a DOL Project folder provided by one Group Manager, we constructed a database of 1,425 DOL-related TINs. We analyzed these TINs to help determine the impact of the DOL initiative on taxpayers in the New Jersey District. We did not determine if taxpayers were sent Letters 11 or Letters 1058.

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The 166 taxpayers who did not receive a systemic CP 504 were probably levied against as a first action by revenue officers in the CFf. These taxpayers were part of the DOL initiative, and levying as a first action was common practice on DOL cases. (This issue is discussed in detail in the following section of the report.) Since District practices also discouraged initial analysis prior to levy action on the DOL initiative, revenue officers would not have checked to ensure that a proper “Notice of Intent to Levy” (CP 504, Letter 1058, or Letter 11) was issued.

Employer Burden

Levying as a first action on DOL cases caused additional burden to employers, who may not otherwise have been affected.

The District’s instructions to levy against taxpayers as a first action and to levy all available sources resulted in revenue officers sometimes levying as many as 14 employers for 1 taxpayer. Case reviews identified employer responses indicating that they had not employed taxpayers for several years. Levying as a first action on DOL cases caused additional burden to employers, who may not otherwise have been affected.

Levy as a First Action Was a District-wide Practice

We previously informed the District Director about the practice of levying as a first action in an Audit Memorandum and in our audit report titled, *Review of Special Projects in the New Jersey District Collection Division*. We reported in both of these documents that revenue officers in the New Jersey District Collection Division were instructed by Collection management to take levy action without attempting initial contact with taxpayers. We recommended that the New Jersey District Collection Division discontinue the practice of levying as a first action without performing initial analysis on each case and ensuring that a “Notice of Intent to Levy” has been issued.

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In July 1998, we recommended that the New Jersey District discontinue the practice of levying as a first action in the CFf. In response to our recommendation, the Acting Chief, Collection Division, issued revised levy procedures to all Collection employees.

In response to our concerns, the Acting Chief, Collection Division, issued revised levy procedures to all Collection employees on July 13, 1998. According to the revised procedures, “Effective immediately, levy action will not be the first action taken on a case...,” with limited exceptions based upon managerial review and approval. Results of revenue officer interviews support that levying as a first action had been an accepted practice. One revenue officer indicated that levying as a first action was emphasized during training. Levying as a first action was also indicated in one revenue officer’s inventory review as a “good job.”

We determined that New Jersey District revenue representatives and revenue officers were instructed to give priority attention to issuing levies on DOL cases. Revenue representatives and revenue officers were also instructed by management to initiate levy actions without sending a “Notice of Intent to Levy” or performing initial analyses on cases.

Revenue officers were instructed to initiate levy actions without sending a “Notice of Intent to Levy” or performing initial analyses on cases.

A review of 134 DOL-related Collection cases with levy action in FY 1997 identified the following conditions:

- No initial attempt to contact the taxpayer - 128 cases (95 percent).
- No initial analysis was conducted by the assigned revenue officer - 98 cases (73 percent).
- No ACS history or documentation of ACS research in the case file - 121 cases (90 percent).

Also, revenue officers may not have always performed required research. Revenue officers are required to research available information to determine whether enforcement is the proper action on a particular case. Results of our analysis showed that for 82 of 134 (61 percent) DOL Project cases, there was no evidence of researching the Integrated Data Retrieval System (IDRS),³ or using ACS transcripts to help determine that

³ The IDRS allows IRS employees access to taxpayer accounts. IDRS capabilities include: (a) researching account information

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About 84 percent of the DOL Project cases we reviewed were closed as CNC, and 81 percent of those were closed “unable to contact” or “unable to locate.”

levy was the appropriate action. Based on our review of the remaining 52 cases, the IDRS was used in only 29 percent, ACS was used in only 7 percent, and both IDRS and ACS were used in 3 percent.

In addition, we assessed the productivity of the 134 cases by analyzing those cases deemed as CNC and the related dispositions. The District disposed of 112 of 134 (84 percent) cases as CNC. We determined that 91 of the 112 (81 percent) cases were closed as “unable to contact” or “unable to locate.”

Thirty-eight of the 91 cases closed as “unable to contact” or “unable to locate” required field investigations, per CNC procedures. We determined that 39 percent (15 of 38) of the cases did not contain any evidence of the required field investigations. Although the District had requested deviation authority for field investigations, the request was not granted.

Appendix V outlines additional information from operational reviews, interviews, evaluations and self-assessments supporting that the District was operating under procedures contrary to those in the IRM. We determined that required levy procedures were being circumvented District-wide.

Appendix IV provides a time line of the District’s involvement with the DOL initiative. Early stages of the initiative, between September 1996 and January 1997, indicate that cases were being worked without documented procedures. Beginning in February 1997, some revenue officers received verbal instructions to work cases using levy as a first action and to close cases expeditiously. In March 1997, the District issued draft written procedures and began tracking statistics on cases worked as part of the initiative.

and requesting tax returns or other documents, (b) entering transactions and adjustments, (c) entering collection information for storage and processing in the system, and (d) automatically generating notices and other output.

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The Division issued a memorandum on March 18, 1997, which provided the first indication of written procedures from the Division level. This document referenced a conference call held on March 17, 1997. The initial version of this memorandum contained language to “exhaust levy sources.” A later version of this same memorandum contained language to “expeditiously issue 1058s,” and “exhaust levy sources.” Another memorandum was sent to Field Branch Chiefs on March 27, 1997, and was received by at least one Branch on March 31, 1997. Attached to this document were the CNC requirements and the reporting format for tracking DOL cases.

Because revenue officers had been working cases without formal procedures since at least early February 1997, the Division may have formalized procedures in March 1997 for an upcoming regional review. In addition, the District initiated actions to review cases that had been closed as CNC. Final written procedures were issued in May 1997. However, by that time, most of the taxpayers involved in the initiative had already been levied against.

**The Department of Labor Initiative Adversely
Affected Productivity**

Cases for the DOL Project were extracted from the ACS, the Queue⁴ and the CFf inventories. According to Collection Division management, the DOL match was designed to provide productive inventory for revenue representatives and lower-grade revenue officers in the CFf. However, according to revenue officers and managers, the matching initiative did not provide

⁴ The Queue is a holding tank for balance due and return delinquency accounts. Those accounts that do not meet criteria for issuance to the CFf will remain in the Queue until the criteria are revised, or they are specifically called out.

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The DOL Project did not provide the anticipated productive work. We determined that over 18 percent of DOL-related cases tested were returned to the Collection Queue.

productive work. Revenue officers and managers believed that DOL cases were unproductive, not worth the effort, and a waste of time.

From the DOL-related tax periods tested, we determined that over 18 percent (392 of 2,064) were returned to the Collection Queue. In contrast, only about six percent (31 of 490) of the non-DOL tax periods tested were returned to the Queue.

The initiative was intended to provide more work for lower-grade revenue officers and revenue representatives (GS-05 and GS-07). Revenue representatives were to initiate work on the DOL cases, and lower-grade revenue officers were to be available to handle the anticipated response resulting from the mass levy activity.

However, cases resulting from the DOL match were not worked solely by revenue representatives and lower-grade revenue officers. Some of the groups assigned DOL cases did not have any revenue representatives, and were forced to assign GS-09 revenue officers to work these cases.

The number of taxpayers responding to the levy actions caused resources to be diverted to DOL cases. Eventually the initiative involved assigning cases to higher-grade revenue officers (GS-11 and GS-12). Our review of 134 DOL cases showed that DOL cases spanned all four branches and were worked by at least 24 revenue officers and representatives located in 11 groups within the District.

Estimated resources needed to work DOL cases were understated, which caused revenue officers to be diverted from more productive work. As a result, other Collection programs may have suffered.

Working DOL cases required spending resources in excess of those the District originally planned. DOL cases were expected to close quickly. However, according to one Branch Chief, the large volume of cases and the number of taxpayers responding to the levy actions overwhelmed the District. As a result, higher-grade revenue officers were diverted from more productive work to DOL cases, including revenue officers in some groups that normally focused on Business Masterfile Trust Fund Repeaters or

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Large-Dollar Individual Masterfile cases. In addition, DOL cases were assigned to teams specifically designed to work the higher-graded cases. At least one Operational Review indicated that the Offer-In-Compromise Program lost effectiveness due to the DOL project.

The Collection Division noted the DOL initiative for long-term revenue resulting from installment agreements and wage levies against the taxpayers involved. Results of our case reviews showed that, in some cases, the Project was credited with levies that were already in place. Additionally, the October 1997 FedState Monthly Briefing indicated that the DOL cases would be closely monitored to determine the effectiveness of the DOL Project. However, as of September 1998, we found no evidence of close monitoring, or a final analysis reporting the success or failure of the DOL initiative.

The Department of Labor Initiative Was Poorly Documented

We determined that the District did not maintain adequate documentation of the DOL initiative. The District could not provide requests for computer support from the State indicating objectives, input, or expected output from the computer matching initiative. The only matching data the District could provide were taxpayer and DOL data on four computer diskettes.

The District was unable to explain the methodology used to identify taxpayers affected by the DOL Project.

These four diskettes contained four files with 92,625; 56,965; 18,287; and 8,808 records. However, the District was not able to explain the methodology it used to generate the output on the diskettes. In addition, the District was unable to identify all TINs of taxpayers affected by the DOL Project. As a result of the matching initiatives, Collection field groups received lists of wage levy sources where IRS data matched New Jersey DOL data. These lists were in the form of computer printouts that, when received, were separated and provided to

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groups assigned to work the DOL initiative. The District did not keep copies of these lists and the originals were destroyed.

Because of inadequate documentation, the IRS cannot easily identify taxpayers who were affected by the DOL initiative. In fact, there are no definitive data available to determine the total number of taxpayers who may have been affected by the DOL Project, or all of the procedures the District followed in working DOL cases.

As part of its system of management controls, all transactions and significant events in the Collection Division should be clearly documented. The documentation should be readily available for examination and should be accurate and complete. The documentation should also facilitate tracing transactions and events after they are completed.

**Levy Action Was Used on the Department of
Labor Initiative to Achieve Statistical Goals**

The DOL initiative was used to help the New Jersey District achieve statistical goals. In FY 1997, the District was given goals designed to promote improvements in timeliness and efficiency. These FY 1997 goals were part of a two-year plan to bring New Jersey's timeliness and efficiency indicators in line with regional norms.

Statistical Goals Affected by the DOL Initiative

The results of the DOL initiative affected at least four goals (shown parenthetically) established for FY 1997:

- Average Hours per Entity Disposition (39).
- Entity Dispositions (77,486).
- Cycles per Entity Disposition (39).

*The New Jersey District
Collection Division used the
DOL Project to assist in
achieving statistical goals.*

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- Taxpayer Delinquent Account (TDA)⁵ Overage (18.2 percent).

According to the District's *Strategy for Accomplishing FY 1997 Goals*, the DOL match was one of the District's planned initiatives. Memoranda issued from March through May 1997 provided procedures and action dates for DOL cases. One memorandum issued at the end of March 1997 stated the need for 3,400 entity dispositions prior to the end of an evaluation period for the District.

The DOL Project, as worked, had a favorable effect on the District's collection goals.

According to the June 25, 1997, Director's Monthly Briefing, the DOL initiative had a favorable effect on the District's collection goals. The briefing noted the following statistical improvements resulting from the DOL initiative:

- Average Hours per Entity Disposition dropped from 46.2 in April to 44.1 in May.
- Cycles per Disposition dropped from 38 in April to 36.3 in May.
- Entity Dispositions through June 7 were 2,830.
- TDA Overage, which was diluted by DOL cases, dropped to 14 percent from 14.6 percent in May.

Cumulative statistics captured by the Division through June 21, 1997, indicated that between June 7 and June 21, DOL Entity Dispositions increased from 2,830 to 3,992. The District closed 1,162 cases in a two-week period, and a total of 3,445 cases in June 1997, in an attempt to meet the Entity Disposition goal prior to the end of an evaluation period.

The DOL initiative case closures significantly contributed to the achievement of goals. The following chart demonstrates the impact that DOL case closures had on the District's statistical goals:

⁵ Balance due accounts are referred to as Taxpayer Delinquent Accounts or TDAs.

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Goal	FY97 Goal	March 1997	June 1997	September 1997
Avg. Hours per Entity	39	46.5	39.3	38.2
Cycles per Entity	39	38.5	34.1	34.7
Entity Dispositions	77,486	77,230	88,834	90,771
TDA Overage Percentage	18.2%	18%	15.6%	19.7%

Figure 2 Comparison of New Jersey District Collection goals and performance levels through March 1997 (First month for tracking DOL initiative results), June 1997 (End of Quarter) and September 1997 (End of FY 1997).

In our opinion, management instructions to eliminate procedures requiring initial case analysis and contact prior to levy on DOL cases contributed to the achievement of the above four goals. For example, the low average, 4.9 hours per disposition computed by the District for DOL Project cases, helped achieve the overall goal of 39, and DOL dispositions helped the District exceed the entity disposition goal by approximately 13,000.

Instructions to eliminate initial case analysis and contact prior to levy action in DOL cases contributed to achieving goals.

The District worked cases identified by the DOL initiative in an effort to meet statistical goals. There were indications that many of these cases were assigned beginning February 1, 1997. For example, minutes from one Branch level meeting held on February 24, 1997, indicated that all branches had received case listings and that levy sources needed to be loaded to the Integrated Collection System, and levies issued on all available sources. According to information from Collection Monthly Activity Reports, normal levy activity doubled in 13 of 23 groups in, or before, February 1997.

We performed an analysis of the 264 cases in our sample relative to the February 1, 1997 date. Our analysis showed the following:

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In our opinion, the District was performing more case actions prior to February 1, 1997, in an effort to achieve proper resolution. However, for cases worked on or after February 1, 1997, the District's efforts changed from achieving proper resolutions to achieving statistical goals.

	Cases Worked Prior to February 1, 1997	Cases Worked on or After February 1, 1997
Total Cases	38	226
Attempt to Contact	24 (63%)	15 (7%)
Initial Analysis	19 (50%)	58 (26%)
Letter 1058 Issued	15 (39%)	29 (13%)

Figure 3 *There were significant changes after February 1, 1997, in the quality of casework for 264 cases with levy actions in FY 1997.*

In addition, we analyzed cases closed as CNC and the related dispositions. Based on these results, the District's rate of closing cases as CNC rose 11 percent after February 1, 1997. In addition, the District's rate of closing cases as "unable to contact" increased from 4 percent to 47 percent. The rate of closing cases as "unable to contact" or as "unable to locate" increased from 56 percent to 82 percent after February 1, 1997.

Inventory Management Strategies to Meet Goals

According to the results of the June 1997 Regional Review, Key Performance Indicator goals were being met or exceeded through April 1997. However, we found indications that the Northeast Region may have had doubts about the use of the DOL initiative to help obtain goals. One of these goals was the TDA overage percentage. The Region noted that although the TDA overage percentage was lower, inventories were much higher as a result of DOL cases.

During the period January through August 1997, monthly inventories in the District trended upward from 12,000 to 24,000, before trending downward to 14,000 in September 1997. As noted by the Region, the increase in inventories resulted from the DOL Project. The majority of DOL Project cases were assigned and worked during this time period.

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According to a branch operational review, the high inventories, attributable to the DOL initiative, were acceptable.

Deadlines were established for taking actions and resolving DOL cases. Mid-June 1997 was considered the target for generating DOL case dispositions. The expectations for working DOL cases by the target disposition date caused revenue officer inventories to exceed allowable maximum levels. Targeted inventory levels for GS-12, GS-11, and GS-09 revenue officers are 50, 79, and 107, respectively. After the DOL Project was initiated, inventory levels for individual revenue officers were sometimes as high as 300 cases. According to a branch operational review, the high inventories, attributable to the DOL initiative, were acceptable.

High inventory levels, requirements for actions and case dispositions, and short time periods can affect the quality of case processing. On February 20, 1997, one Group Manager issued instructions for revenue officers to:

- Give DOL cases special attention.
- Initiate levy action right away.
- Not send Letters 1058.
- Not perform Initial Analysis.

These instructions, along with working a large number of cases in short time periods, resulted in procedures not being followed and taxpayers being mistreated.

According to interviews with District management, once actions were initiated on DOL cases, the District became inundated with taxpayer contacts and overwhelmed with the amount of work necessary to properly resolve these cases.

One Group Manager indicated that it became difficult to ascertain which cases were DOL Project cases and which cases were part of regular processing. Any confusion experienced by revenue officers between DOL cases and regular cases could result in regular cases being processed under DOL Project procedures. This could have resulted in levy as a first action on taxpayers not targeted by the DOL initiative.

DOL Project inventories may have also been used to meet overage goals. According to the Collection

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Division FedState Coordinator, in June 1997 the District was using a particular Collection group to maintain DOL cases in inventory. However, the group had been disbanded in the first quarter of FY 1997.

We identified notations made by the Collection Division Chief and by the Staff Assistant on a version of the June 25, 1997, Director's Monthly Briefing document and other documents, showing TDA overage figures both including and excluding the group's inventory. We also determined that in the last quarter of FY 1997, between September 6 and September 27, this group's inventory dropped from 4,188 to 276 cases. The notations and significant decrease in inventory for a group that was disbanded in the first quarter of FY 1997 raise a suspicion that the District may have attempted to enhance its performance against the TDA overage goal by excluding cases from TDA overage computations.

The Assertion that the Department of Labor Initiative Targeted "Uncooperative" Taxpayers Was Unfounded

In the third quarter of FY 1997, the DOL initiative was submitted to the New Jersey Quality Coordinator as a "Best Practice." According to the Best Practice write-up, the basis for the DOL initiative was to identify "uncooperative" and delinquent taxpayers for enforcement action. However, we determined that there were no analyses conducted to determine whether taxpayers were "uncooperative."

Based on our analysis of Masterfile account information for 1,425 DOL-related TINs obtained from one Group Manager, 796 cases were closed as CNC. Approximately 9 percent (71 of 796) of these cases were disposed of as "decedent case." According to our interviews with Collection management, the Collection Division FedState Coordinator (Chief, Branch I) and revenue officers responsible for working DOL cases,

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There was no documented attempt to assess a taxpayer's willingness to cooperate and/or the ability to pay prior to the levy action on DOL cases.

there were no initial analyses conducted to determine whether taxpayers were uncooperative prior to revenue officers working cases, nor were any actions taken by revenue officers working these cases to determine the same.

Results of our review of 134 cases worked as part of the DOL initiative showed that in 116 cases (86 percent), there was no documented attempt to assess the taxpayer's willingness to cooperate and/or the ability to pay prior to the levy action. In our opinion, without contacting taxpayers, conducting an analysis of prior histories, and identifying the type and/or number of outstanding accounts, the IRS has little, if any, basis for labeling taxpayers "uncooperative."

Recommendations

The District revised levy procedures during our audit to curtail the practice of levying as the first action. The IRS also recently implemented a requirement to warn taxpayers of possible enforcement action before levying if the most recent "Notice of Intent to Levy" is over 180 days old. The above measures plus corrective actions to findings in our prior audit report titled, *Review of Special Projects in the New Jersey District Collection Division*, will address many conditions identified in this review.

In response to our recommendations in the audit report, *Review of Special Projects in the New Jersey District Collection Division*, the IRS stated that all special projects in the New Jersey District Collection Division have ended. The response also included the following additional corrective actions:

- Revised review and approval procedures have been instituted regarding all District seizure actions.
- Training will stress the need for prudent use of levies as an enforcement tool.

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- District Counsel will review and approve all locally developed notices.
- The New Jersey District will establish review, oversight and documentation procedures for all future special projects.
- District Office Research and Analysis (DORA) Offices will secure sound empirical data to support all future projects.
- Special projects will conform to Compliance Initiative Project guidelines, including requirements to ensure proper initiation and re-authorization.

In addition to the above actions, the New Jersey District should:

1. Emphasize the policy and procedural requirements on the use of levy authority, including requirements outlined in Appendix VI of this report.

Management's Response: The IRS conducted training for all field personnel in the New Jersey District to reinforce all legal and procedural requirements. The training covered levy criteria, taxpayer rights, and the IRS Restructuring and Reform Act of 1998 (RRA 98) requirements. In addition, managerial approval is required on certain levies, and the District has developed a levy "check sheet" to ensure all applicable processes, procedures, and legal requirements are followed.

The IRM has been revised to specifically require, except when a District Director has determined that the collection of tax is in jeopardy, at least one attempted contact prior to levy action. In addition, the Collection Quality Management System Handbook, issued March 26, 1999, addresses the issue of attempted contact. The standard "When Enforcement Actions were Taken, was Good Judgement Exercised" is not met unless there has been an attempt to reach a voluntary resolution with the taxpayer prior to enforcement. This is a national standard that is used in the review of enforcement actions taken by revenue officers.

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2. Review levy actions taken during the past nine months to identify instances that meet criteria requiring remedies to taxpayers.

Management's Response: During the regular review process, Collection group managers in the New Jersey District will be required to identify casework defects and take appropriate corrective actions. Collection management will also review levy actions taken in the New Jersey District during the past 6 months to identify instances that meet criteria requiring remedies to taxpayers.

Conclusion

The New Jersey District violated IRS policy and procedural requirements in its use of levy authority. In particular, as a result of an initiative that used levy authority to help achieve the District's goals, New Jersey taxpayers were inappropriately issued levies without proper notice, in hardship situations, and when they were not liable for the tax in question. These taxpayers were mistreated, in large part, because the District mismanaged this initiative. In addition, employers were caused undue burden by having to respond to unproductive levies. Overall, this initiative was found to be relatively unproductive. However, many of the personnel involved with this initiative were acknowledged by their managers for what was considered a successful project.

By adopting our recommendations, the New Jersey District can strengthen the use of levy authority in a manner consistent with both sound tax administration and concern for proper taxpayer treatment. The IRS has a legitimate need to use a levy as an administrative means to enforce collection of taxes. Enforcement is an important element of an effective compliance program. However, when levying against taxpayers, the IRS must ensure that appropriate legal and procedural

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requirements are followed and that taxpayers are treated properly.

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Appendix I

Detailed Objective, Scope, and Methodology

Our overall objective was to determine if the New Jersey District properly exercised levy authority by following legal and procedural requirements, and by using sound business judgment in the treatment of taxpayers. To achieve this objective we:

- I. Assessed factors that could indicate an increased risk to the quality and appropriateness of levies issued by the District.
 - A. Interviewed District management to evaluate the effectiveness of oversight over the levy issuance process.
 - B. Reviewed national Collection Division activity reports to compare the annual volume of New Jersey levies with other districts.
 - C. Reviewed locally developed levy statistics to identify any anomalies in the pattern of month-to-month levy volumes.
 - D. Interviewed local management to determine the basis for sharp increases identified in levy volumes for certain months.
- II. Determined whether levies were issued in accordance with both legal and procedural requirements.
 - A. Interviewed Collection officials and front-line staff involved in a local initiative, the Department of Labor (DOL) Project, which accounted for a significant volume of levies, to determine procedures followed.
 - B. Reviewed a sample of 264 cases with levy action in Fiscal Year (FY) 1997 to assess levy issuance procedures followed by the District and to determine whether any levy actions resulted in taxpayer mistreatment. We selected our sample of 264 cases from approximately 600 cases returned to the District after being subject to review through the Collection Quality Measurement System. We selected those cases that met all of the following criteria:
 - 1. Assignment to the Collection Field function in FY 1997.
 - 2. Evidence in the case history of a levy issued in FY 1997.
 - 3. Sufficient Integrated Collection System case history to evaluate the levy action.

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- C. Analyzed Masterfile data and researched Automated Collection System histories related to cases included in our review to ascertain whether legal notice of intent to levy requirements were met prior to levy.
 - D. Obtained Taxpayer Identification Numbers for approximately 56,000 taxpayer accounts associated with the DOL Project and performed computer analyses of related Masterfile data to evaluate any potential risk to taxpayers.
 - E. Requested the IRS' Regional Counsel opinions on possible remedies to taxpayers who were not afforded their legal right of notice of intent to levy and/or who may have been affected by improper levy action.
- III. Determined the effect that the DOL Project had on levy issuance procedures, and ultimately, the quality and productivity of case work. To accomplish this objective, we reviewed District Director Briefing files, interviewed DOL Project officials, and reviewed available DOL Project documentation to determine:
- A. Project development time lines, objectives, methodology, results and relationship to achievement of statistical measures.
 - B. Instructions issued relative to levy procedures on Project cases and conformance with legal and procedural guidelines.
 - C. Changes in Project direction and focus regarding levy issuance procedures and case disposition emphasis.
 - D. Changes in individual workloads resulting from the Project and any effect on Division productivity, quality of levy actions, and case dispositions brought about by changing inventory levels.
- IV. Determined the appropriateness of uncollectible determinations that followed procedures set forth in the DOL Project instructions by reviewing 91 cases that were reported as Currently Not Collectible (unable to locate/contact) in a sample of 134 DOL-related cases (Note: The 134 DOL-related cases were part of the sample of 264 cases with levy actions in FY 1997 in II.B.).

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Appendix II

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Appendix III

Report Distribution List

Deputy Commissioner Operations C:DO
Chief Operations Officer OP
Assistant Commissioner (Collection) OP:CO
Assistant Commissioner (Program Evaluation and Risk Analysis) M:OP
Regional Commissioner, Northeast Region RC
District Director, New Jersey District DD
National Director for Legislative Affairs CL:LA
Office of Management Controls M:CFO:A:M

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Appendix IV

Procedures and Time Line for Working the Department of Labor Initiative

The New Jersey District did not have documentation available to provide evidence of the Department of Labor (DOL) Project's initial stages. The District informed us that the Project start date was March 1997, and the District began reporting statistics as of March 29, 1997.

Based on available information, the following outlines the initiation and implementation of the DOL Project and instructions communicated to employees for working DOL cases.

DOL Project Initiation

The New Jersey District and the State of New Jersey entered into a Memorandum of Understanding on December 18, 1995, whereby the District would obtain DOL information through various matching initiatives. As early as March 1996, the District had provided 110,000 Individual Masterfile (IMF) Taxpayer Identification Numbers (TINs) to be matched against the New Jersey DOL database to identify levy sources for enforcement action. As early as April 1996, the Collection Division indicated plans to use data from the DOL match to issue levies.

As early as September 1996, the results of the matching initiative, which provided information on more than 40,000 taxpayers, were loaded onto a Collection Division computer system to act as an Inventory Delivery System (IDS) for managers. Managers began accessing this inventory when it became available.

In an effort to update the existing information, the District planned and conducted an additional match between October and December 1996. For this match, the District provided the State with more than 90,000 TINs. This match resulted in obtaining wage information for more than 56,000 taxpayers. The additional wage information was updated on a District computer system for access by managers. The case locations were stratified among the Automated Collection System, Queue, and Collection Field function (CFf) for identification purposes.

The updated match with DOL in December 1996 resulted in updating information on the computer system for more than 56,000 taxpayers. The computer system provided an IDS for managers to access cases to be worked. In preparation for the planned "Bulk Levy Project" in December 1996, authority to issue levies was delegated to GS-07 revenue representatives for levy issuance and levy release.

Documentation indicates that DOL cases were being worked prior to the District's March 1997 date. Case reviews and project documentation indicate that cases, eventually

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counted as part of the DOL Project, were assigned to the CFf as early as February 1, 1997. These cases were worked by procedures that contradicted those outlined in the Internal Revenue Manual. Additional information from Collection Monthly Activity Reports indicates normal levy activity doubling in 13 of 23 groups in, or before, February 1997. Interviews and available memoranda further indicate that DOL cases were worked prior to March 1997.

Verbal Instructions for DOL Communicated

Instructions for working cases related to the DOL were verbally communicated to the revenue representatives and revenue officers via Branch-level meetings. Minutes from one of the Branch level meetings held on February 24, 1997, indicated the following:

- All Branches had received IMF listings.
- Sources need to be loaded onto the Integrated Collection System.
- Levy all available sources.
- Branch Chiefs to monitor how quickly cases are being worked.
- Report on cases received, cases levied, wage levy hits, and dollars received.
- Tracking Report format would follow.

Also available was a memorandum dated February 20, 1997, which was issued by one of the Group Managers. Instructions outlined in this memorandum follow.

- Indicate special attention on DOL cases.
- Levy action initiated right away.
- No Letters 1058.
- No Initial Analysis.

Additional information included in this document indicated that the teams specifically designed to work higher-graded cases¹ would be working cases and giving priority attention to getting levies issued on DOL cases.

Minutes from an additional Branch meeting held on March 10, 1997, indicated that DOL work was in progress and a report format would follow, and included an indication that a possible Regional Review might be upcoming.

¹ Collection cases are classified by revenue officer grade level based on grading criteria established by management. Grades are assigned to cases based on their probable level of difficulty. Computer-determined grades may be updated, raised, or lowered by group managers.

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Written Instructions for DOL Communicated

The Collection Division, Assistant Division and Branch Chiefs held a conference call on March 17, 1997, to document Currently Not Collectible (CNC) procedures to be followed prior to closing cases as CNC. A follow-up memorandum to the conference call discussed CNC procedures to be followed on DOL cases.

The Collection Division issued a memorandum on March 18, 1997, which provided the first indication of written procedures from the Division level. This document referenced the conference call that was held on March 17, 1997. The initial version of this memorandum contained language to “exhaust levy sources.” A later version of this same memorandum contained language to “expeditiously issue 1058s,” and “exhaust levy sources.” Another memorandum was sent to Field Branch Chiefs on March 27, 1997, and was received by at least one Branch on March 31, 1997. Attached to this document were the CNC requirements and the reporting format for tracking DOL cases.

There is some indication that the procedures outlined in the March 18, 1997, memorandum were not followed. One Group Manager indicated, on a copy of this memorandum provided to revenue officers in the group, to “follow these instructions regarding DOL cases, minus the 1058.” Further noted on this copy was “target for closures for DOL cases is May 31, 1997.”

A memorandum issued by the Collection Division on March 27, 1997, referenced a staff meeting held February 21, 1997, and the conference call held on March 17, 1997. This document established the following dates for specific actions to be taken:

- March 28, 1997: Assign DOL Cases
- April 4, 1997: Levy and/or Letter 1058
- May 6, 1997: Levies served

This document also established a deadline for having 3,400 dispositions accounted for by mid-June to count by June 30, 1997, which was designated as the end of an evaluation period.

The March 27, 1997, memorandum also referred to the “worksheet for statistics” to be used beginning March 29, 1997. The first report was to capture all activity and receipts to date. This further supported that work on DOL cases had previously been initiated. All subsequent reports were to include activity for two-week periods.

On May 8, 1997, the Division issued a memorandum intended to clarify and amend the March 18, 1997, memorandum. The revision added the CNC requirement to “attempt a contact with the taxpayer,” or if a listing was not available, to “conduct a field visit.”

Branch and Operational Reviews

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A Branch Review conducted by the Division Chief indicated the following related to the DOL Project:

- Branch Chief expressed a need for concrete written procedures to work DOL cases.
- Draft and final written DOL procedures dated March 18 and May 8, 1997, respectively.
- The Division Chief identified the need for the Branch Chief to fill procedural voids and set the standards the other Branch Chiefs must then compare with.

An operational review conducted by one Branch Chief indicated the following:

- The Group Manager was concerned about the “many changes” in DOL instructions.
- Proceeding with “latest” instructions.
- Reminded revenue officers to “levy” all sources, “in-line” with “original” instructions.

Project Statistics

DOL Project statistics provided further evidence that the target date for case closures may have been May 31, 1997, as noted on one Group Manager’s instructions. These statistics indicate through July 5, 1997:

- Taxpayers in DOL inventory levied against: 8,260.
- Taxpayers levied against by March 29: 3,288 (40 percent of 8,260).
- Taxpayers levied against by April 12: 5,692 (69 percent of 8,260).
- Taxpayers levied against by April 26: 6,799 (82 percent of 8,260).

In at least one group, revenue officers were required to submit Monthly Feeder Sheets for tracking the number of DOL cases in inventories, and the number of levies issued on the DOL cases. Our review of the Monthly Feeder Sheets available in the group showed 2 revenue officers had issued 1,219 and 1,463 levies, respectively, for the month of April 1997. Revenue officers assigned to work DOL cases in this group issued a total of 4,074 levies for the month of April 1997. Revenue officers in this group also reported issuing 1,390 levies in the month of March 1997.

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Appendix V

Additional Information from District Sources

The following represents information gathered from District operational reviews, interviews, evaluations, and self-assessments. This information is presented as it relates to the topics highlighted.

Levy as First Action

Operational Reviews

Branch-level operational reviews indicated that levy was used as first action.

Interviews with District Personnel

Interviews were conducted with all levels of the Collection Division. These interviews included the FedState Coordinator (Chief, Branch I), who was Acting Chief, Collection Division, other Branch Chiefs, Group Managers, and revenue officers.

The following ideas expressed by revenue officers and managers during interviews support the other evidence that it was District practice to levy as first action on Department of Labor (DOL) Project cases:

- Levy as first action; no contact; no field visits; no phone call.
- Levying instead of contact; DOL procedures deviated from the Internal Revenue Manual (IRM).
- Levy without issuing Letter 1058; release levy if taxpayer did not receive Letter 1058.
- Levy without notice.
- Short-cuts taken on DOL.
- No check for CP 504 (Notice of Intent to Levy); no contact; DOL circumventing IRM.
- No field visit; no Collection Information Statement; instructions contradict IRM.

This information was further supported by comments appearing in employee evaluations and self-assessments. The following are excerpts from these documents related to DOL cases:

- "...multiple levies served as initial action."
- "DOL cases did not require Initial Analysis."

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- “Large number of DOL cases District-wide had to have enforcement action initiated on them.”
- “...promptly used levy as needed.”
- “...levying as warranted on DOL.”
- “...identify DOL cases and levy.”
- “...queue cases identified for levy action.”

No Sound Basis for Matching Initiative

Evaluations and self-assessments of the Chief, Collection Division, and the FedState Coordinator (Chief, Branch I) indicated personal accomplishments for using the Inventory Deliver System (IDS) to provide “challenging work” to revenue representatives while making positive contributions to Business Master Plan goals. In addition, credit was indicated for developing a program to incorporate information into an Individual Masterfile (IMF) levy approach and initiating “mass levies” on a large number of cases.

Initiative to Meet Goals

Operational Reviews and Evaluations

Operational reviews indicated the DOL Project’s impact on stated goals. They further indicated a deadline of June 27, 1997, for the evaluation period, and that “letting up” on working DOL cases would negatively impact meeting year-end goals.

Information from evaluations and self-assessments also showed the need to timely process DOL cases to implement a Division initiative for Fiscal Year (FY) 1997, and addressed the Project’s potential effect on Field Office Performance Indicator goals. In addition, the DOL Project was consistently referred to in terms of its contribution to the accomplishment of goals for Entity Dispositions and Average Hours per Entity Disposition.

Personal Accomplishments Resulting from Initiative to Meet Goals

Evaluations and self-assessments for FY 1997 reflected New Jersey Collection managers’ personal accomplishments resulting partly from involvement with the initiation and/or implementation of the DOL Project. The following are some examples:

- The initiation of cooperative efforts with the State of New Jersey, among them a Levy Project.
- Meeting of goals attributable to FedState initiatives.
- Through DOL Project, secured levy sources on IMF cases in the Automated Collection System and Queue for Bulk Levy Processing.

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- Leadership caused FedState Program to attain high level of success employing non-traditional methods.
- In tandem with Division Chief, designed innovative projects to meet goals.
- Directed development of IDS to identify productive cases using matching initiatives with New Jersey.
- Championed full implementation of Project at Group, Branch, and Division levels.
- Achieved success with “buy-in” from revenue officers assigned to Project.
- Tempered group concerns relating to change.
- Employed 90 percent of Branch in special projects.
- Recognized 86 percent of managers with Distinguished ratings.
- Outstanding contributions by non-traditional methods.
- Initiated IMF/DOL match to “cull-out” viable levy sources.
- Branch has been supportive of the use of Integrated Collection System to reduce burden of revenue officers and the Public we serve.
- Indicates the significance of Critical Elements; of particular note, the fact that initial contacts and case decisions have been prioritized.
- Credited with having significant impact on Hours per Disposition and Total Disposition Goals by DOL.
- Credited for coordinating/leading DOL Initiative.

**The New Jersey District Needs to Execute Levy Actions
Consistent with Sound Tax Administration
and Concern for Taxpayer Treatment**

Appendix VI

Guidelines Governing the Use of Levy Authority

26 U.S.C. (1986) - Internal Revenue Code

According to 26 U.S.C. § 6331(d) (1986), a levy may be made only after notifying the taxpayer in writing of the intent to levy no less than 30 days before the day of the levy. This is required to be done once for each tax period owed. The 30-day notice shall be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, no less than 30 days before the day of the levy.

The 26 U.S.C. § 6343 (1986) states that a levy should be released if:

1. The liability for which the levy was made is satisfied or becomes unenforceable by reason of lapse of time.
2. Release will facilitate the collection of such liability.
3. The taxpayer has entered into an installment agreement to pay the liability unless otherwise provided for in the agreement.
4. Collection Division has determined that levy is creating an economic hardship due to the financial condition of the taxpayer.
5. Collection Division determines the property has been wrongfully levied upon.

The 26 U.S.C. § 6334 (1986) states there shall be exempt from levy:

1. Unemployment benefits.
2. Worker's compensation.
3. Certain annuity and pension payments.
4. Judgement for support of minor children made prior to date of levy.
5. Amounts exempt based on dependents and personal deductions.
6. Certain public assistance and disability payments.

The 26 U.S.C. § 6159 (b) (1986) states that unless the Director determines that the collection of tax is in jeopardy, the Director will notify the taxpayer in writing at least 30 days before terminating an installment agreement.

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The 26 U.S.C. § 7429 (1986) states that within 5 days after the day on which a jeopardy levy is made less than 30 days from notice of demand for payment, Collection Division shall provide the taxpayer with a written statement of the information upon which the jeopardy determination was made. According to Internal Revenue Manual (IRM) section 57(16)0, Legal Guide for Revenue Officers, if a District Director determines that collection of tax is in jeopardy, a “Notice of Intent to Levy” is not required. This is a jeopardy levy.

The 26 U.S.C. § 6331 (1986) states that, in general, no levy may be made on the property of any person on any day which such person is required to appear in response to a summons issued by the Collection Division unless where jeopardy conditions exist. The IRM procedures require Group Manager and Branch Chief approval if the levy is served on the appearance date.

The 26 U.S.C. § 6502 (1986) states that tax may be collected by levy only if the levy is made within 10 years after the assessment of tax, or prior to any period agreed to in writing subsequent to assessment and prior to the expiration of the period previously agreed upon.

The 26 U.S.C. § 6332 (1986) provides special rules regarding life insurance and bank levies:

1. Life insurance payments should be paid over to the Internal Revenue Service (IRS) 90 days after service of levy.
2. Banks shall surrender levied amounts only after 21 days after service of levy.

The 26 U.S.C. § 6343 (1986) states that continuous wage levies discontinue after the collection statute expires.

The 26 U.S.C. § 7433 (1986) states that, in general, a taxpayer may bring civil action for damages caused by an IRS employee who, in connection with any collection of Federal tax, recklessly or intentionally disregards any provision of the 26 U.S.C. (1986).

The 26 U.S.C. § 6331 (1986) states that the property levied upon must be property or rights to property of the taxpayer.

IRS Guidance

The IRM 1218 Policy Statement P-5-71 states that as a general rule, accounts will be reported as Currently Not Collectible (CNC) when the taxpayer has no assets or income which are, by law, subject to levy. However, if there are limited assets or income, but it is determined that levy action would create a hardship, the liability may be reported as CNC. A hardship exists if the levy action prevents the taxpayer from meeting necessary living expenses.

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The IRM Handbook 1218 - Policies of the Internal Revenue Service - states the following Collecting Principles: All our decisions about collecting must be guided by these principles. To the extent that they are, we will succeed in our mission. One of the principles is that taxpayers' rights will be observed, including their rights to privacy.

The IRM Handbook 1218 - Policies of the Internal Revenue Service – Collection Techniques (Forbearance when reasonable doubt exists that assessment is correct) – states that whenever a taxpayer raises a question or presents information creating reasonable doubt as to the correctness or validity of an assessment, reasonable forbearance will be exercised with respect to collection provided (1) adjustment of the taxpayer's claim is within control of the IRS, and (2) the interests of the Government will not be jeopardized.

Per IRM 536(14).22, retirement plan benefits (income) receivable from a qualified pension fund or account generally will not be levied upon if the annual benefits are \$6,000 or less (\$500 per month).

Per IRM 5362.22, a jeopardy levy may be served if any conditions for making a jeopardy assessment exist. If a jeopardy situation is identified, the employee will prepare a memorandum to the Chief, Collection Division, requesting the Chief's signature and appropriate levy form. The Chief will indicate approval by signing the notice of levy forms. In addition, if the 10-day notice and demand required by 26 U.S.C. § 6331(a) (1986) has not been issued, or the 10-day notice has been issued but the 10 days have not expired, the taxpayer must be given an immediate notice and demand. Only the Chief, Collection Division, or above can approve a jeopardy levy.

Per IRM 5181, revenue officers should make prompt contact on all taxpayer cases. The first contact with a taxpayer can either be a telephone call or a field visit, depending on which method is best suited for a particular case. As part of the initial contact, revenue officers should:

1. Warn of enforcement action, including levies, when payment cannot be made immediately.
2. Verify whether the tax was paid.
3. Collect sufficient financial information to make a collectibility determination.
4. Ensure that taxpayer has received copy of *Your Rights As a Taxpayer* (Publication 1).

The IRM 5365 (3) states that the Integrated Data Retrieval System should be checked prior to levy action.

The IRM 5364.2 indicates that it is the practice of the IRS not to levy upon assets subject to administrative actions by the court (e.g., bankruptcy).

The IRM 5366.3 (1) states that any excess collection from levies must be refunded immediately if the amount owed is already paid when the payment for levy is received.

The New Jersey District Needs to Execute Levy Actions Consistent with Sound Tax Administration and Concern for Taxpayer Treatment

The IRM 5366.3 (5) states that employees may levy on both spouses' income for joint liabilities only in flagrant or aggravated instances of neglect or refusal to pay. Managerial review and concurrence are required.

The IRM 105.1 section 1.7.0 (1) states that the purpose of the two-tiered interview approach is to secure full payment. If that is not possible, the interviewer moves successively to the next best solution, beginning with a short-term extension and ending with the last resort - an installment agreement (or a CNC if the taxpayer is unable to pay anything at all).

The IRM 5323.31 and 5323.2 state that analysis of a taxpayer's financial condition, compliance, and tax history provides a basis to make one or more of the following case decisions:

- a) Require payment from available assets in full or in part; this is preferred over other case resolution methods, including installment agreements.
- b) Recommend or initiate enforcement actions (*this would be based on the results of the interview*). If assets are available to pay taxes and a taxpayer is unwilling to convert assets to cash, this method should be considered before an installment agreement or other case resolution.
- c) File a notice of Federal Tax Lien.
- d) Allow extension of time to full pay.
- e) Make an installment agreement.
- f) Explain offer-in-compromise.
- g) Report the account a CNC.

Revenue Officer Critical Elements

Job element # 1 (*Investigation and Analysis*) requires revenue officers, upon receipt of a case, to proceed in a logical manner to secure, verify, and analyze information, both external and internal, that will lead to prompt and proper case resolution. As part of initial contact, revenue officers are to analyze financial information to assess the taxpayer's ability to pay.

Job element # 2 (*Case Decisions*) requires the revenue officer to develop a plan of action for case resolution with consideration to the overall benefit to the Government and taxpayer's rights in making case decisions. Case decisions include pursuing immediate full payment or suspending collection activity based on available facts. Decisions regarding the appropriateness of levy or other enforcement action should be based on case history.

**The New Jersey District Needs to Execute Levy Actions
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Appendix VII

Management's Response to the Draft Report




DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF TREASURY
INSPECTOR GENERAL
RECEIVED

September 7, 1999

1999 SEP -8 P 2:32
FOR TAX ADMINISTRATION

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Charles O. Rossotti 
Commissioner of Internal Revenue

SUBJECT: Draft Audit Report - The New Jersey District Needs to
Execute Levy Actions Consistent with Sound Tax
Administration and Concern for Taxpayer Treatment --
Umem 7/20/99

Thank you for the opportunity to review and comment on your draft report of levy actions in the New Jersey District. The report identified some serious problems in the New Jersey District, which have prompted us to make a number of changes in that office. We have also made changes in our national quality management system and are clarifying our national procedures to ensure that our employees use levy authority in a manner consistent with both sound tax administration and concern for proper taxpayer treatment. We agree, that when we levy against taxpayers, the Internal Revenue Service must ensure that appropriate legal and procedural requirements are followed and those taxpayers are treated properly.

One of our more significant concerns deals with the issue of levying prior to any attempt to contact the taxpayer (identified as a procedural deficiency in 85 percent of the cases reviewed). When we reviewed our procedures in the Internal Revenue Manual (IRM), we found that the procedures did not specifically establish a standard that an attempted contact is required prior to issuing a levy. While the IRM procedures did strongly imply that the first action on new cases should be an attempt to contact (IRM 5181), they were not specific enough to prevent a different interpretation. Accordingly, we are revising the Notice of Levy Handbook to specifically require, except when a District Director has determined that the collection of tax is in jeopardy, at least one attempt at contacting the taxpayer before issuing the notice of intent to levy and notice of your right to a hearing. When this notice is issued, levy is the next planned action.

Our comments on the specific recommendations in this report are as follows:

IDENTITY OF RECOMMENDATION #1:

Emphasize the policy and procedural requirements on the use of levy authority, including requirements outlined in Appendix VI of this report.

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ASSESSMENT OF CAUSE:

Taxpayers in the New Jersey District were inappropriately issued levies.

CORRECTIVE ACTIONS:

1a. Training, to reinforce all required legal and procedural requirements, has been conducted for all field personnel in the New Jersey District. The training covered levy criteria, taxpayer rights, and the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) requirements. In addition, managerial approval is required on certain levies, and the district has developed a levy "check sheet" to ensure all applicable processes, procedures, and legal requirements are followed.

1b. The IRM has been revised to specifically require, except when a District Director has determined that the collection of tax is in jeopardy, at least one attempted contact prior to levy action. When published, the handbook will be distributed to Collection field offices, nationwide.

1c. The Collection Quality Management System (CQMS) Handbook, issued March 26, 1999, addresses the issue of attempted contact. The standard "When Enforcement Actions were Taken, was Good Judgement Exercised" is not met unless there has been an attempt to reach a voluntary resolution with the taxpayer prior to enforcement. This is a national standard that is used in the review of enforcement actions taken by revenue officers.

IMPLEMENTATION DATES:

1a. Completed: March 2, 1999

1b. Completed: June 28, 1999

1c. Completed: March 26, 1999

RESPONSIBLE OFFICIALS:

District Director, New Jersey District

Assistant Commissioner (Collection) OP:CO

CORRECTIVE ACTION MONITORING PLAN:

District management will monitor and review case actions to ensure compliance with all required legal and procedural requirements. The results of these reviews, including any case defects identified and resulting corrective action, will be sent to the Assistant Commissioner (Collection), through regional management. In addition, conformance reviews are being conducted, nationwide, by the Assistant Commissioner (Collection) to determine compliance with the provisions of RRA 98.

The New Jersey District Needs to Execute Levy Actions Consistent with Sound Tax Administration and Concern for Taxpayer Treatment

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IDENTITY OF RECOMMENDATION #2

Review levy actions taken during the past 9 months to identify instances that meet criteria requiring remedies to taxpayers.

ASSESSMENT OF CAUSE:

Taxpayers may have been subjected to improper levy action and may have a remedy under 26 U.S.C. § 6343 and/or U.S.C. § 7433.

CORRECTIVE ACTIONS:

2a. During the regular review process, Collection group managers in the New Jersey District will be required to identify casework defects and take appropriate corrective actions.

2b. Collection management will review levy actions taken in the New Jersey District during the past 6 months (from date of this report) to identify instances that meet criteria requiring remedies to taxpayers.

IMPLEMENTATION DATES:

2a. Completed - March 2, 1999. This, however, will be an ongoing process.

2b. Proposed - December 31, 1999

RESPONSIBLE OFFICIAL:

District Director, New Jersey District

CORRECTIVE ACTION MONITORING PLAN:

District management will be required to provide, through the region, the results of the review of levy actions taken in the New Jersey District, to the Assistant Commissioner (Collection). The results will provide the number of cases reviewed, the timeframe of the cases reviewed, the number of cases that meet the criteria requiring remedies to taxpayers, and what remedies were provided to the taxpayer.

If you have any questions or need additional information, please call me, or a member of your staff may contact Kyle Ballew at 646-4943.

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